



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-3168

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120265.

The City of Houston (the "city") received a request for "copies of documents used in it's [sic] decision to recommend the indefinite suspension of" the requestor's client. In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Initially, we note that among the records you submit to our office for review, you include what appear to be documents filed with a court. To the extent the submitted records have been filed with a court, they are a part of the public record and must be released.¹ *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). If, however, the records have not been filed with a court, we will consider whether the remaining records are protected from disclosure by section 552.108 of the Government Code.

Section 552.108, the "law enforcement," exception excepts from required public disclosure

¹The "law enforcement exception" was not intended by the legislature to shield from public view information in the hands of police units that, absent special law enforcement needs or circumstances, would ordinarily be available to the public if possessed by a different governmental unit. *See* Open Records Decision Nos. 434 at 2 (1986), 287 at 2 (1981) (whether information falls within section 552.108 must be determined on a case-by-case basis).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

....

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your brief to this office, you explain that the requested information is excepted from required disclosure since "the investigation resulted in a charge being filed against the defendant, and because his criminal case is pending." As it appears that the requested records relate to a pending criminal investigation, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, except as noted above, the remaining information may be withheld pursuant to section 552.108(a)(1). However, certain basic information normally found on the front page of an offense report, including the identification and description of the complainant and a detailed description of the offense, is generally considered public. *See* Gov't Code § 552.108(c); *see generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, we conclude that, except for basic information subject to release, section 552.108(a)(1) excepts the remaining information from public disclosure. Although section 552.108(a)(1) authorizes you to withhold this information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.² *See* Gov't Code § 552.007.

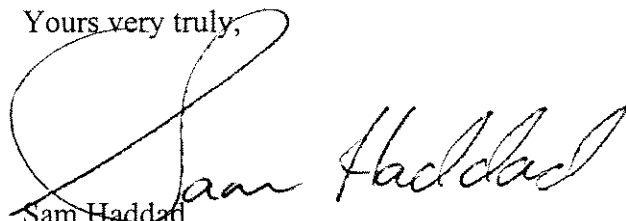
²We note that some of the information in the submitted documents is also confidential by law. Therefore, if you choose to waive your right to withhold the information under section 552.108, we urge you to exercise caution in releasing the information to the public. *See* Gov't Code §§ 552.352 (distribution of confidential information is criminal offense), 552.130 (confidentiality of motor vehicle operator's or driver's license); *see also* Open Records Decision No. 565 (1990) (information generated by Texas Crime Information Center or National Crime Information Center must not be made available except in accordance with federal regulations).

You also claim that certain front page information, that is otherwise not excepted from disclosure by section 552.108(c), is confidential by law under section 552.101 in conjunction with the "informers privilege."³ In this situation, you seek to withhold the identity of the complainant who reported a violation involving the requestor's client. *See generally Houston Chronicle*, 536 S.W.2d at 559 (identity of complainant is generally public information); Open Records Decision No. 127 (1976). This office has found special situations in which front page offense or incident report information may be held from required public disclosure. *See* Open Records Decision Nos. 366 (1983), 333 (1982). Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

However, we note that a governmental body must state to the attorney general the exceptions that apply to the request within ten business days of receiving it, and must submit written comments explaining the reasons why the stated exceptions apply within fifteen days of receiving the request. *See* Gov't Code § 552.301(a), (b)(1). You did not timely raise section 552.101 in conjunction with the informer's privilege. The informer's privilege is actually a governmental entity's privilege to withhold from disclosure the identities of those persons who report violations of law. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). Thus, the informer's privilege is waivable by a governmental body, and the city has waived the privilege by failing to timely assert the privilege in this instance. Open Records Decision No. 549 (1990).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" that loops around the first part of the name.

Sam Haddad
Assistant Attorney General
Open Records Division

³However, you have made no demonstration that compelling reasons or special circumstances exist for withholding this complainant's identifying information under section 552.108.

SH/rho

Ref.: ID# 119879

Enclosures: Submitted documents

cc: Ms. Vanessa Legett
613 Kinney Avenue
Austin, Texas 78704-1432
(w/o enclosures)